The next matter of complaint against the prosecution is that counsel for the Crown asked a great number of leading questions when examining the principal witness for the Crown. It is certainly true, as a cursory perusal of the transcript shows, that many leading questions, far too many, were put to this witness when he should have been examined with care since he was plainly an accomplice. Nevertheless, although we deprecate what occurred, we cannot say that it led to any injustice in this case and therefore we cannot uphold this as a ground of appeal.

Lastly there was the incident when a witness was seen talking to the foreman of the jury. Fortunately there is direct authority on the effect of an irregularity of this kind in a criminal trial. In *R. v. Twiss*[1] some jurymen spoke to prosecution witnesses during an adjournment about certain matters connected with the trial but the Judge after inquiry into the matter was satisfied that the prisoner had been in no way prejudiced and allowed the trial to proceed. The present case is clearer since the conversation between the prosecution witness and the juryman had nothing whatever to do with the trial. There was nothing therefore which could possibly have prejudiced the case of the appellant. We would however emphasise that although jurymen are allowed to go about while the trial is proceeding, it is desirable they should avoid any contact of any kind with witnesses concerned in the case and should not discuss the case with any one except other jurymen. In the present case nothing occurred to prejudice a fair trial and as the other matters raised in the appeal are points which we are clearly of the opinion should be decided against the appellant, the appeal is dismissed.

Appeal dismissed.

Solicitors: *Wee Tiong, Rajah & Miranda.*

KHADIJAH BINTE ABDULLAH v. S. I. A. ALSAGOFF

[C. A. (Whyatt C.J. (S), Thomson C.J. (F.M.) and Tan Ah Tah J.) March 25, 1957]

[Singapore — Civil Appeal No. 27 of 1956]

Landlord and Tenant — Licensee of statutory tenant — Premises left by tenant, rent paid by him — A member of the family staying in the premises — Tenant's capacity to maintain action for trespass — Whether in possession — Control of Rent Ordinance (Cap. 242), ss. 14, 15, 16 & 27.

This was an appeal from a judgment in which it was held that the plaintiff was entitled to possession of a house known as 367 Orchard Road. The action was brought by the plaintiff against his former wife with a view to evicting her from the former matrimonial home which she had continued to occupy since their divorce in 1951. After their divorce, the plaintiff allowed her to remain in possession of the house, he paying the monthly rent to the landlord and living elsewhere. There was one period of a few months when he failed to pay the rent and the defendant paid it instead but he resumed payment after this interval and has continued to pay the rent right up to the commencement of these proceedings and indeed since that date. In 1953 the landlord served a notice to quit on the plaintiff but the plaintiff did not comply with the notice and accordingly claimed that he became a statutory tenant as from that date. During the whole of the period of four years or thereabouts which had elapsed since the plaintiff and defendant were divorced, the former had never set foot on these premises and in fact had never sought to do so except for the limited purpose of removing some sports gear and other personal belongings which he left behind when they parted in 1951. But in December 1954 he changed his mind. The explanation for this was that he "might get married and wanted the house back." Three months later, on March 10, 1955, he served a notice to quit on the defendant, requiring her to deliver up possession of the house which he claimed she held as a licensee on June 10, 1955, and as she did not do so, he issued the writ in these proceedings on June 23, 1955.

The parties had five children of whom the eldest was a daughter aged 18. Since their divorce, the girl and a younger brother lived with their mother at the premises, and the remaining children lived with the plaintiff.

Held: (Whyatt C.J. and Tan Ah Tah J., Thomson C.J. (F.M.) dissenting): the plaintiff remained in possession of the premises through the defendant and his daughter, and therefore he became a statutory tenant on the determination of his contractual tenancy. Having become a statutory tenant, the plaintiff remained under the protection of the Control of Rent Ordinance because his daughter, who was a member of his family was residing in the premises. By preserving his status as statutory tenant the plaintiff also established a sufficient right to or in the premises to support an action for trespass.

Thompson v. **Ward**[1] distinguished. Appeal dismissed.

Cases referred to:—

(1) *Thompson v. Ward* (1953) 2 Q.B. 153.
(2) *Skinner v. Geary* (1931) 2 K.B. 546.
(3) *Brown v. Brash* (1948) 2 K.B. 247.
(4) *Ramasamy Pillai v. Meyappa Chettiar* (1955) M.L.J. 105, 107.
(5) *Keeves v. Dean* (1924) 1 K.B. 685.
(6) *King's College, Cambridge v. Kershman* 64 T.L.R. 547.
(7) *Haskins v. Lewis* (1931) 2 K.B. 1.

COURT OF APPEAL.

N. A. Christopher for the appellant (defendant).

C. L. Duff for the respondent (plaintiff).

Whyatt C.J. : — This is an appeal from a judgment in which it was held that the plaintiff is entitled to possession of a house known as 367 Orchard Road. The action was brought by the plaintiff against his former wife with a view to evicting her from the former matrimonial home which she has continued to occupy since their divorce in 1951. After the divorce, the plaintiff allowed his former wife, the defendant, to remain in possession of the house, he paying the monthly rent to the landlord and living elsewhere. There was

one period of a few months when he failed to pay the rent and the defendant paid it instead but he resumed payment after this interval and has continued to pay the rent right up to the commencement of these proceedings and indeed since that date. In 1953 the landlord served a notice to quit on the plaintiff but the plaintiff did not comply with the notice and accordingly claims that he became a statutory tenant as from that date. During the whole of the period of four years or thereabouts which has elapsed since the plaintiff and defendant were divorced, the plaintiff has never set foot on these premises and in fact has never sought to do so except for the limited purpose of removing some sports gear and other personal belongings which he left behind when he and his wife parted in 1951. But in December 1954, he changed his mind. The explanation for this may well be that given by him in evidence where he is recorded as saying "I thought in December 1954 that I might get married and wanted the house back." Three months later, on the 10th March 1955, he served a notice to quit on the defendant, requiring her to deliver up the possession of the house which he claimed she held as a licensee on the 10th June 1955, and as she did not do so, he issued the writ in these proceedings on the 23rd June 1955.

The proper inference to be drawn from these facts, in my judgment, is that after the divorce, the plaintiff left his former matrimonial home without any intention of returning to it and it was not until, as he says, he had it in mind to set up a new matrimonial home that he sought to evict his former wife so that he could once again reside in this house. These facts bear a striking resemblance to the facts in the case of *Thompson v. Ward*[1] a case to which unfortunately the attention of the learned trial Judge was not called by counsel on either side. In that case the plaintiff was the statutory tenant of a house in which, after the death of his wife, he lived with the defendant as his mistress. They took in a lodger who eventually supplanted the plaintiff in the affections of the defendant and the plaintiff then left and went to live elsewhere. The defendant continued to live in the house with the lodger, paying the rent to the landlord, but the latter did not know that the plaintiff had ceased to live in the premises. The plaintiff ultimately re-married and it was found as a fact that he then abandoned any intention of returning to the premises. Subsequently he changed his mind and decided he wanted to return to the premises with his wife. He, therefore, served a notice on his former mistress determining her licence but as she refused to comply, he sued her in trespass. He succeeded in obtaining an order for possession in the first court but this decision was reversed on appeal. The Court of Appeal held that before a non-occupying statutory tenant can bring an action in trespass, he must establish that he has retained an intention to return to the premises and furthermore has clothed that intention with some outward and visible sign, for example, by installing some person on the premises with the function of preserving the premises for his own ultimate home-coming. The Court of Appeal therefore decided that as the plaintiff was a non-occupying statutory tenant who had, at one time, abandoned the idea of returning to the premises, he did not have such a right or interest in the premises as would support an action for trespass, notwithstanding that he was still a statutory tenant who remained liable to pay rent to the landlord until he gave the requisite notice terminating his tenancy.

Now in the present case, it seems clear that after leaving his former wife in 1951, the plaintiff abandoned any intention of returning to reside at 367 Orchard Road and that attitude of mind continued at all events up to December 1954 when, as he said, he was thinking of getting re-married and wanted to get the premises back. Even if it be assumed that he harboured an intention *in pectore* to reside there again some day, he did nothing to clothe that inward intention by any outward or visible sign such as leaving a deliberate symbol of possession on the premises or installing someone as licensee to preserve the premises for his ultimate home-coming. It is true that he continued to pay the rent of the premises but in my view, that is not inconsistent with and does not rebut the conclusion to be drawn from the evidence as a whole that the plaintiff had abandoned any intention of returning to reside at 367 Orchard Road until he changed his mind, in view of the prospect of his re-marriage, at the end of 1954. It follows, therefore, in my judgment that the position of the plaintiff is similar to that of the plaintiff in *Thompson v. Ward*[1], *supra*, and that unless it can be said that the Control of Rent Ordinance requires different considerations to be applied to this case, the plaintiff's claim to eject the defendant as a trespasser must fail.

I turn, therefore, to consider whether the Control of Rent Ordinance contains any provisions which prevent the application of the principles laid down in *Thompson v. Ward*[1] to this case. The provisions relevant to this question are contained in sections 14, 15, 16(c) and 27 and may be paraphrased thus : an order may be made for the recovery of possession of domestic premises from a statutory tenant if neither the tenant nor a member of his family is residing in the premises; and "member of his family", by definition, includes a daughter over 16 years of age.

In the present case the plaintiff and the defendant had five children by their marriage, and since the divorce, two of them, a girl aged 18 and a small boy

aged 4, have lived with their mother, the defendant, at 367 Orchard Road, and the remaining children have lived with the plaintiff. Although it was not an issue in these proceedings, it seems clear on these facts that if the landlord had brought proceedings against the plaintiff for the recovery of possession of 367 Orchard Road he would have failed because of the provisions of section 27 and paragraph (c) of section 16 of the Ordinance.

The former defines a statutory tenant as a tenant who remains in possession after his contractual tenancy has been determined and who cannot by reason of the provisions of the Ordinance be deprived of his possession. The plaintiff, in this case, after the expiry of the notice to quit in 1953, remained in possession through his licensee (namely, his former wife) although, as has been pointed out, the licensee was not preserving the premises for his ultimate home-coming. In the United Kingdom, where the Rent Restriction Acts apply to dwelling houses only and not as in Singapore to dwelling houses and business premises, the position would be different since the Acts do not protect the tenant unless the possession amounts to residence; in other words if the tenant is not residing in the premises, the right of the landlord to recover possession from the tenant is governed by the Common Law. In Singapore, however, the Control of Rent Ordinance applies to business premises as well as to dwelling houses, and therefore, a distinction is drawn, and necessarily drawn, in the Ordinance itself, between possession and residence, since the latter is of its nature only applicable to domestic premises. Hence section 27 deals with possession in the case of all kinds of premises, business and domestic, while paragraph (c) of section 16 deals with residence in the particular case of domestic premises. It is clear, therefore, in my opinion that the word "possession" in section 27 is not synonymous with residence, and indeed if it were, it would lead to the very curious result that a statutory tenant would be a tenant who remains in residence after a notice to quit and who cannot be deprived of his residence by reason of section 14 and paragraph (c) of section 16, that is to say, who cannot be deprived of his residence because he is a tenant who is in residence. I do not think the Ordinance should be construed so as to produce such an involuted result.

If, therefore, the plaintiff through his licensee remained in possession of these premises within the meaning of section 27 after the expiry of the notice to quit, the only further question to be considered is whether the provisions of section 14 read with paragraph (c) of section 16 prevent the landlord depriving him of it. The wording of these provisions is as follows :—

> "14. No order . . . for the recovery of possession of any premises comprised in a tenancy shall be made except in the cases set out in this Part of this Ordinance.
>
> "16. In the case of any domestic premises such an order (for the recovery of possession) may . . . be made in any of the following additional cases namely:—
> (c) Where neither the tenant nor any member of his family is residing in the premises . . . . ."

The first part of paragraph (c), which relates to the tenant's residence reproduces in the Singapore statute law the principles laid down in English case law commencing with *Skinner v. Geary*[2] and elaborated in *Brown v. Brash*[3] to which I have already referred, namely, that a tenant who is not resident is not entitled to the protection of the Rent Restriction Acts, and it is clear that the landlord in the present case could bring his claim within this part of paragraph (c). But more important for present purposes is the second part of paragraph (c) which relate to a member of the tenant's family and which is peculiar to Singapore. The landlord would be met with the plea that a member of the tenant's family, namely, the plaintiff's daughter, aged 18, was residing in the premises and as this plea could not be successfully traversed, it would follow, in my view, that no order for recovery of possession of the premises could be made and the landlord's action would fail.

This being the legal position as between the landlord and the plaintiff on the facts of this case, the next question is : if the plaintiff has sufficient right or interest in the premises to enable him to resist a claim by the landlord for possession, is this right or interest also sufficient to support an action for trespass? Some indication of the answer to this question is, I think, provided by an observation of the Master of the Rolls in the course of the argument in *Thompson v. Ward*[1], *supra,* when he interposed to say, "But in order to sustain an action for trespass the tenant must show that he is entitled to possession and he cannot do that if the landlord could at any time obtain an order against him." It would seem to follow, *e converso,* that if the landlord cannot obtain an order for possession, then the tenant has a right or interest in the premises sufficient not merely to resist the landlord's claim but also to sustain an action for trespass against third parties. This is certainly so where the statutory tenant's defence to the landlord's claim is based upon occupation by a caretaker who is preserving the premises for his ultimate return. Is the position any different, in principle, where the tenant's defence is based upon occupation by a member of his family, albeit he or she is not preserving the premises for the tenant's ultimate return? As I have already said, in Singapore a statutory tenant can resist a landlord's claim on two alternative grounds : first, on the ground that he is in residence either personally or by means of a caretaker who is

preserving the premises for his return, this ground being founded on the first part of paragraph (c) of section 16 and English case law; secondly, on the ground that a member of his family is residing in the premises, this ground being based on the special statutory provisions in the second part of paragraph (c) of section 16. In the former case it is clear that the power of the statutory tenant to resist the landlord's claim is accompanied by such a right or interest in the premises as entitles him to sue in trespass, and I can see no reason, either on principle or on authority, why in the second case, the same power to resist the landlord's claim should not likewise be accompanied by a right of interest in the premises which will sustain an action for trespass. If it were not so, it would give rise to the anomalous, indeed absurd, position that statutory tenant could prevent his landlord from regaining possession of the premises but could not prevent third parties trespassing on them. I do not think *Thompson v. Ward*[1], *supra,* or the other English authorities cited in that case require me to reach such a conclusion. Accordingly, I am of the opinion that the plaintiff in this case has established sufficient right or interest in the premises to support an action for trespass. I would, therefore, dismiss this appeal with costs.

Thomson C.J. (F.M.) : — In this case I find myself compelled to say with the most profound regret that I am unable to agree with the conclusions of the other members of the Court.

I take the material facts of the case as they have either been admitted by the parties or found by the learned trial Judge to be as follows.

On 28th September 1938 the plaintiff, who is a Muslim, married the defendant who had previously on 18th November 1936 given birth to a daughter, Aminah, of whom it is admitted the plaintiff was the father. Subsequently there were four other children born of the marriage.

About the end of 1941 the parties went to live on the premises at No : 367 Orchard Road to which this litigation relates in pursuance of some sort of arrangement which the learned trial Judge has described as a lease, but which would seem to have been neither more nor less than a contractual monthly tenancy of the sort that is usual in this Colony. The defendant alleged that by the terms of this tenancy she and the plaintiff became joint tenants but for reasons which I do not propose to discuss further than by saying I agree with them the learned trial Judge found that the plaintiff became the sole tenant.

The parties maintained their matrimonial home in the premises until 1951. In that year as a result of matrimonial differences having arisen the plaintiff left the premises on 11th November and thereafter he never in fact returned to them although he left on them some furniture, the amount of which was not stated at the trial, and some sports equipment which would seem to have been part of the stock-in-trade of the business which he carried on. Nothing turns on those things being kept on the premises for it is clear that at a later date the plaintiff either removed them or wanted to remove them. On 20th November, 1951, the plaintiff was granted a divorce under Muslim law in the Kathi's Court. It would appear that no consequent order as to the custody of the children was made by any Court, but in fact Aminah and the youngest child Rizad Ali remained with the defendant who continued in occupation of the premises and is still in occupation of them while the other three children went to live with the plaintiff in the first instance at a hotel. It would appear that Aminah is still living on the premises with the defendant.

Changes took place in the ownership of the premises and at some time in September, 1953, the then owner terminated the plaintiff's tenancy by notice. The exact date of termination is not clear, but it was certainly subsequent to 18th November, 1952, that is to say, subsequent to the date on which Aminah attained the age of 16 years.

After he left the premises in November, 1951, the plaintiff continued to pay the rent until April 1954, when, apparently in consequence of differences as to the payment of maintenance and as to the custody of the children, he ceased to do so and thereafter until December, 1954, the rent was paid by the defendant. After the end of 1954 the plaintiff resumed payment of the rent to the landlord and he has apparently continued to pay it ever since.

Differences continued between the parties, and on 9th March, 1955, the plaintiff, through his solicitors, gave the defendant notice to quit the premises and threatened that "in case of any refusal or neglect on your part to comply with this Notice of demand, an action of ejectment and or other legal proceedings will be commenced against you". This notice was not complied with, and on 23rd June, 1955, the present proceedings were commenced.

In his statement of claim the plaintiff averred that when he left the premises in 1951 he "permitted the defendant as his licensee, free of rent, to occupy the said premises together with his children". He went on to refer to the Notice to Quit dated 9th March and concluded (paragraph 11) "The said Notice to Quit having expired the defendant is now a trespasser on the premises." By way of relief he claimed possession of the premises and damages and this was subsequently

amended by the addition of a claim for a declaration that the defendant was a trespasser.

The defence was largely to the effect that the original contractual tenancy was granted to both parties as joint tenants and that by his refusal to pay rent after April 1954 the plaintiff had released his joint-tenancy to the defendant or had surrendered his tenancy to the landlord. There was also a counterclaim in respect of rent paid by the defendant for eight months in 1954 "if judgment for possession is given to the plaintiff."

In the event the learned trial Judge gave judgment for the plaintiff on the claim for possession (but not for damages) and for a declaration "that the defendant is a trespasser on the premises at No. 367 Orchard Road" and for the defendant on the counterclaim.

It is against that judgment on the claim that the defendant has now appealed.

I do not propose at this stage to discuss the course of reasoning which led Knight J. to the conclusions which have been stated. I shall, however, be returning to certain portions of his judgment at a later stage.

I commence my own consideration of the case with the observation that the proceedings were in substance an action for trespass. It is true that there was some sort of claim for damages, but the plaintiff's substantial claim was for possession and that was based on a series of averments which led up to the final averment that the defendant was a trespasser. Moreover, he asked for a declaration to that effect. The importance of this point will be clear at a later stage.

I accept the learned Judge's finding that originally the plaintiff was the sole tenant of the premises and indeed there is little, if any, material to support any other finding. His tenancy, however, in so far as it arose from his original contract with the landlord, was terminated by Notice with effect from some time in October 1953, and thereafter he could only have any rights in relation to the premises by reason of the provisions of the Control of Rent Ordinance (Chapter 242). Indeed it is the basis of the plaintiff's claim that he was a statutory tenant of the premises and this is stated in the first paragraph of his Statement of Claim.

Section 27 of the Control of Rent Ordinance states what persons are statutory tenants by reason of that Ordinance, and, apart from certain classes of sub-tenants which do not call for consideration here, a statutory tenant is :—

> "Any tenant of premises who remains in possession thereof after the determination by any means of his tenancy and who cannot by reason of the provisions of this Ordinance be deprived of such possession by his landlord."

In other words, before a person can claim to be a statutory tenant of premises each and all of four conditions must be fulfilled :—

(a) he must have been a tenant of the premises;

(b) his tenancy must have been determined, not assigned or anything of the sort;

(c) he must have remained in possession of the premises after the determination of his tenancy; and

(d) the provisions of the Ordinance must prevent him being deprived of possession by the landlord of the premises.

In the present case, the plaintiff clearly fulfilled the first and second of these conditions for he had been a tenant and his tenancy had terminated. But did he fulfil the third condition? Did he remain in possession of the premises after the determination of the tenancy?

That is a question of mixed law and fact, and I propose to deal with it in the light of the English authorities. For, as I pointed out in the case of *Ramasamy Pillai v. Meyappa Chettiar*[4] in relation to section 15 of the then Federation Ordinance which is the same as section 27 of the Singapore Ordinance.

> "In my opinion there is no substance in the argument that because the English Acts do not contain any definition of a statutory tenant as does section 15 of our Ordinance there is thereby some material difference between the law here and the law in England. It is true that the English Acts do not formally define a 'statutory tenant' although the expression has been used by the English Courts for very many years. But when it is remembered that the English Acts only apply to dwelling houses and do not provide for any preliminary proceedings before a tribunal corresponding to our Rent Assessment Board. I can find no material difference between the provisions of our section 15 and section 15 of the English Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, which deals with the position of a 'tenant who by virtue of the provisions of this Act retains possession of any dwelling house to which this Act applies'. I can see no material distinction between such a tenant and 'any tenant of premises who remains in possession thereof after the determination by any means of his tenancy and who cannot by reason of the provisions of this Ordinance be deprived of such possession by his landlord'."

It is not necessary to consider here at length the nature and extent of the rights of a statutory tenant under the local Ordinance or under the English Rent Acts. Since, at any rate, 1923, it has been settled that a statutory tenant can maintain trespass against any person who goes on to the premises without his permission (see *Keeves v. Dean*[5]).

There has, however, been considerable discussion as to what amounts to possession so as to establish the character of a statutory tenant on the part of a party whose normal tenancy has been determined, particularly in the case of a third party who has ceased to be in actual physical occupation of the premises. The results of that discussion so far as they have a bearing on the present case are to be found in the cases of *Brown v. Brash*[3] and *Thompson v. Ward*[1].

Briefly, the position may be summarised as follows. It was decided in *Keeves v. Dean*[5], *supra,* that a statutory tenant might maintain proceedings against a trespasser. In *Skinner v. Geary*[2] it was held that a tenant to be entitled to the protection of the Rent Acts must be in personal occupation or actual possession of the premises. The judgments of Asquith L.J. in *Brown v. Brash*[3], *supra,* and Evershed, M.R. in *Thompson v. Ward*[1], *supra* are too long for quotation and are so closely reasoned that any attempt to summarise them would be misleading. Their effect, however, may fairly be said to lie in the following passage from the judgment of Evershed, M.R. in the latter case (at page 164):—

"In order that a statutory tenant may be said to retain possession through the medium of an occupying licensee, the latter must be his licensee 'with the function of preserving the premises for (the tenant's) own ultimate home-coming'."

In other words, the question is not whether there is a bare intention to maintain a supposed statutory tenancy in legal existence, an intention which in a case like this might well genuinely exist for a variety of reasons. There must be an intention to maintain possession for purposes of actual residence (or in this Colony perhaps in the case of business premises for the purpose of business). Moreover, it must be for the purposes of the party's own residence which necessarily involves on his part some *animus revertendi.* Where absence is prolonged, the onus of proving such *animus revertendi* rests on the putative tenant and to discharge it he must be able to point to some outward and physical sign and, in particular, where he relies on physical occupation by a licensee, it must be the function of the licensee to preserve the premises for the putative tenant's own ultimate homecoming.

If this statement of the law is correct, then I am compelled to the conclusion that the learned trial Judge in the present case applied the wrong test in order to determine the question which was before him, a test moreover which he probably would not have applied had the case of *Thompson v. Ward*[1], *supra,* been brought to his notice. He was not concerned with any question between the plaintiff and the landlord. He was concerned with the question of whether the plaintiff had any rights in trespass against the defendant. If the plaintiff had any such rights, it could only be because he was a statutory tenant of the premises, and he could only claim to be a statutory tenant of the premises, if he satisfied the condition *inter alia* that he had remained in possession of the premises after the termination of his contractual tenancy in the sense that possession was construed in the cases of *Brown v. Brash*[3], *supra,* and *Thompson v. Ward*[1], *supra.*

In other words, during the material time which was from the date of termination of the contractual tenancy until the commencement of the present proceedings did the plaintiff maintain an intention to return to the premises for the purposes of residence? During that time was the defendant or the daughter, Aminah, occupying the premises for the purpose of preserving them for the plaintiff's ultimate homecoming?

The learned trial Judge discussed at some length the question of whether some surrender of the tenancy on the part of the plaintiff was to be inferred from his failure to pay rent for some months during 1954. He came to the conclusion, and with respect I agree with him, that there was no question of any such surrender and, of course, no statutory tenant in the Orchard Road area of Singapore would dream of surrendering his tenancy without some very adequate compensation. As I have pointed out, however, in my opinion the question was not whether at any time he intended or not to surrender the tenancy. The question was whether he had a genuine intention to return and reside upon the premises so as to maintain that sort of possession which was necessary if his statutory tenancy were to exist or continue to exist.

His Lordship then went on to say that he considered that the plaintiff was sufficiently in possession through Aminah to acquire a statutory tenancy. But here, if I may say so with great respect, there lurks the fallacy of *petitio principii.* As against the landlord no doubt the continued residence of Aminah would, by reason of the provisions of the Control of Rent Ordinance, be sufficient to prevent the plaintiff from being deprived of possession if he was in possession, but it was not in itself enough to enable him to satisfy the condition of being in possession so as to entitle him to the rights of a statutory tenant, unless the young lady was there with the express purpose of preserving the premises for his own ultimate homecoming.

There are questions of fact involved, and as to such questions an appellate Court is always reluctant to express any view. Nevertheless, in the present case, I myself am satisfied that had the learned Judge applied the test which ought to have been applied, the result would have been unfavourable to the plaintiff. I have read the evidence and the correspondence which was in evidence between the solicitors for the parties. I can find not a scrap of evidence to show that after he left the premises in November 1951 the plaintiff ever had any intention of returning to reside upon them. He may well have intended (or hoped) to keep in existence what he conceived to be his rights in respect of the premises, rights which sooner or later would probably have had a definite commercial value. It may be for this reason that he was content to go on paying the

rent although in this connection it is to be observed that his payment of rent was taken into account in maintenance proceedings against him by the defendant and that in any event *vis-a-vis* the landlord he was legally liable for the rent (see *King's College, Cambridge v. Kershman*[6]). Nor do I think is there a scrap of evidence to show that either the defendant or Aminah was on the premises with the intention of preserving them for the plaintiff's homecoming. Indeed, not only is there a lack of evidence but there is positive evidence to the contrary, for on 4th November, 1954, the plaintiff's solicitors wrote a letter to the defendant's solicitors to the effect *inter alia* that he was prepared to take Aminah to reside with him elsewhere than on the premises, and was prepared to collect and remove all the property he had left on the premises.

Having thus arrived at the results that after the determination of his contractual tenancy the respondent did not remain in possession of the premises either by himself or by anybody else who was there for the purpose of preserving them against his own ultimate homecoming, and that he was not therefore a statutory tenant of the premises and so able to maintain an action in trespass against the appellant I am compelled to the opinion that the appeal should be allowed.

Out of regard, however, for the views which have been expressed by the learned Chief Justice of Singapore I think I should add a few words on the question of whether the provisions of the Control of Rent Ordinance would enable the respondent to resist a claim by the owner of the premises of possession for I agree that if the answer to this question were in the affirmative an extremely anomalous position would arise.

With great respect, I am of the opinion that the answer to that question is in the negative.

The only restrictions which the Ordinance places on a landlord's rights to recover possession of his premises are contained in sections 14, 15 and 16, which are clearly to be read together. Section 14 reads as follows :—

> "No order or judgment for the recovery of possession of any premises comprised in a tenancy shall be made or given except in the cases set out in this Part of this Ordinance."

The cases in question, that is to say the cases which are excluded from the general prohibition contained in the section, are set out in section 15 and section 16 adds certain additional cases where the premises are domestic premises, one of which is :—

> "(c) where neither the tenant nor any member of his family is residing in the premises or any part thereof."

Now clearly up to a point the premises in the present case did not fall within section 16(c) for the respondent's daughter, Aminah, was at all material times over sixteen years of age and therefore by reason of the definition contained in section 2 was a member of his family and at all material times she was residing on the premises. To that extent, it may be said, the premises were not excluded from the prohibition contained in section 14. That, however, is irrelevant because the premises were at no material time within the prohibition contained in section 14 and therefore the question of whether they were excluded from it did not arise. Section 14 only protects possession of "premises comprised in a tenancy." "Tenancy" is defined in section 2 of the Ordinance, and the respondent's position clearly does not fall within that definition. It is true that sections 27 and 28 as read with the definition of "tenant" in section 2 have the effect of enlarging the definition of tenancy so as to include the tenancy of a statutory tenant as such. But the respondent is not a statutory tenant because he has not remained in possession of the premises in the sense in which possession has been interpreted by the Courts. The premises are not, therefore, "premises comprised in a tenancy", the prohibition contained in section 14 does not apply to them and therefore there can be no question of whether the surrounding facts are such as to bring them within one or other of the cases which would exclude them from section 14 if it did apply to them. In the circumstances I fail to see that he would have a leg to stand on in any proceedings brought against him by the landlord.

Tan Ah Tah J. : — This is an appeal from a judgment whereby possession of certain premises known as No. 367 Orchard Road was ordered to be delivered by the defendant to the plaintiff.

The plaintiff went into occupation of the premises together with the defendant in January 1942. At that time the defendant was the wife of the plaintiff. The learned trial Judge found as a fact that the plaintiff was the sole tenant of the premises from the commencement of the tenancy. Although it had been contended at the trial that the plaintiff and defendant were joint tenants of the premises, this finding was not disputed by counsel for the appellant at the hearing of the appeal, and it suffices to say that I agree with the trial Judge's finding of fact on this point.

The parties had five children of whom the eldest was a daughter called Aminah, who was born on the 18th November 1936. The whole family lived together in the premises until November 1951. On the 11th November 1951, as a result of differences between the parties, the plaintiff left the matrimonial home, and subsequently, on the 20th November 1951, he divorced the defendant.

Although the plaintiff ceased to reside in the premises he permitted the defendant to remain in

occupation of them together with his daughter Aminah and his youngest child. He went to live elsewhere with his three other children but continued to pay the rent of the premises until April 1954. Owing to further differences between the parties the plaintiff ceased to pay the rent during the period from May 1954 to December 1954 and it was paid by the defendant instead. In January 1955 the plaintiff resumed payment of the rent and has been paying it ever since.

On the 10th March 1955 the plaintiff served a notice on the defendant requiring her to quit and deliver up possession of the premises to the plaintiff on the 10th June 1955, stating in the notice that she held the premises as his licensee. As the defendant failed to comply with the notice the plaintiff issued the writ in these proceedings on the 23rd June, 1955. In the statement of claim it was alleged that the notice to quit having expired, the defendant was a trespasser on the premises and a claim was subsequently added, by way of amendment, for a declaration that the defendant was a trespasser.

In the meantime there had been a change in the ownership of the premises and in or about September 1953 the new landlord terminated the plaintiff's tenancy by a notice to quit. It is important to observe that at this period Aminah had already attained the age of sixteen years and was residing in the premises with the defendant.

Some evidence was given at the trial to the effect that when the plaintiff left the house in November 1951 some furniture and sports equipment, the latter forming part of the stock-in-trade of his business, remained on the premises. No significance can be attached to this fact as the plaintiff subsequently made arrangements to remove them from the premises. It is clear from the evidence that after leaving the matrimonial home in November 1951 the plaintiff had no intention of returning to the premises until he changed his mind and resumed payment of the rent.

In the English Rent Restriction Acts there are no provisions dealing expressly with the case of a tenant who is not in occupation of the premises but is living somewhere else. The position of such a tenant has been determined by case law. It was laid down in the leading case of *Skinner v. Geary*[2] that, in order to be entitled to the protection of the Acts, a tenant must be in personal occupation of the premises in respect of which he seeks that protection. The principle thus laid down has been elaborated and developed in *Brown v. Brash*[3]. In the Colony the legislature has codified the principle and in doing so has extended it in a manner which will be considered at a later stage of this judgment.

It is provided by section 14 of the Control of Rent Ordinance (Cap. 242) that no order or judgment for the recovery of possession of any premises comprised in a tenancy shall be made or given except in certain specified circumstances. Some of the circumstances in which such an order or judgment may be made are set out in section 15 of the Ordinance.

The position of a "non-occupying" tenant of domestic premises is determined by paragraph (c) of section 16 of the Ordinance the material parts of which are as follows :—

> "16. In the case of any domestic premises such an order or judgment as is referred to in section 14 of this Ordinance may . . . . be made in any of the following additional cases namely — . . . ..
>
> (c) where neither the tenant nor any member of his family is residing in the premises or any part thereof."

The effect of paragraph (c) is first, to reproduce in statutory form the principle laid down in *Skinner v. Geary*[2], *supra,* and secondly, to introduce another principle, which is not to be found in English law, that domestic premises comprised in a tenancy are in effect protected if a member of the tenant's family is residing in the premises or any part thereof. By the definition in section 2 of the Ordinance the phrase "member of his family" includes a daughter who is over sixteen years of age.

Section 27 of the Ordinance defines a statutory tenant as "any tenant of premises who remains in possession thereof after the determination by any means of his tenancy and who cannot by reason of the provisions of this Ordinance be deprived of such possession by his landlord."

If the landlord had sued the plaintiff for recovery of possession of the premises the plaintiff would have relied on the fact that a member of his family, namely, Aminah, who attained the age of sixteen in November 1952, was residing in the premises. In my opinion, however, that fact by itself would not have enabled the plaintiff to defend the action successfully. He would have had to prove that he became a statutory tenant when the contractual tenancy was determined and in order to do so he would have had to show that he remained in possession of the premises immediately after the determination of the contractual tenancy.

It is necessary at this stage to distinguish between *de facto* possession and legal possession. If a tenant is in actual occupation of premises it cannot be doubted that he has *de facto* possession of them. If a tenant is not in actual occupation of premises but has given a licence to another person to occupy them the tenant clearly has legal possession of the premises, and this is true whether or not the licensee is occupying the premises with the intention of preserving them for the tenant's ultimate homecoming. It is only in those cases where the tenant must show that he intends to return to the

premises that it becomes necessary to prove that the licensee was installed by him in the premises with the function of preserving them for his return. In other words the installation of a mere licensee is sufficient to secure the continuance of the tenant's legal possession of the premises, but if the tenant seeks to prove what may be called vicarious residence or occupation through another person he must instal in the premises that type of licensee or caretaker whose functions are described in *Brown v. Brash*[3], *supra.*

In the present case, as the defendant and Aminah were residing in the premises as the plaintiff's licensees when the contractual tenancy was determined it is clear that the plaintiff remained in possession of the premises after the determination of the tenancy. In view of the fact that Aminah was a member of the plaintiff's family the landlord would in my opinion have failed in his action to recover possession of the premises.

It is to be observed that in *Skinner v. Geary*[2], *supra,* although the defendant Geary, who was the tenant of the premises, went to live at other premises about eleven years before the contractual tenancy was determined, it is stated in the headnote and also in the statement of the facts at page 547 that after the notice to quit was served on him he became a statutory tenant of the premises. It is true that the law is to be found in the judgments and not in the headnote or the statement of facts. But it is significant that the case should have been reported in that manner. Another example may be found in a reference to the case of *Haskins v. Lewis*[7] in the judgment of the Court of Appeal in *Brown v. Brash*[3]. It should first be stated that in *Haskins v. Lewis*[7] the landlord served a notice to quit on the tenant after he had moved out of the premises. In *Brown v. Brash*[3], *supra,* the judgment contains the following passage at page 251 :—

> "In Haskins v. Lewis[7] a tenant moved out of premises partly business and partly residential and sub-let the whole of the residential part to two sub-tenants. The Court of Appeal held he had thereby ceased to be a statutory tenant."

It would appear from the foregoing that *Skinner v. Geary*[2] and *Haskins v. Lewis*[7] have been regarded as cases dealing with the determination of an existing statutory tenancy.

In my opinion the proper approach to the subject is to consider the position at two points of time, the first being the moment when a statutory tenancy is created, and the second being the moment when an existing statutory tenancy is determined. In England the same factors appear to be taken into consideration in deciding whether a statutory tenancy has been created or whether an existing statutory tenancy has been determined. In the Colony once it has been ascertained that a tenant has remained in possession of domestic premises after the determination of the contractual tenancy, the premises remain protected, even if he leaves them without any intention of returning to them, provided that a member of his family is residing in them. In other words the existing statutory tenancy is not determined in spite of his ceasing to reside in the premises. So far as the creation of a statutory tenancy is concerned, it is in my opinion not necessary for the tenant to remain in occupation of domestic premises either in person or through a licensee who is there to preserve them for his return; so long as a member of his family is residing there, it is enough if the tenant leaves on the premises a licensee, who may be the very member of his family in residence and who need not have any intention of preserving them for his return but through whom he has legal possession of the premises. It has been said that the keynote of the English Rent Restriction Acts is domesticity and the protection of the home. This dictum is one which is applicable with even greater force in the Colony where, by virtue of the provisions of the Ordinance, domestic premises are protected even though the tenant is not residing in the premises, provided that a member of his family is residing in them. I consider it unnecessary to deal with the question in what circumstances a contractual tenant of business premises becomes a statutory tenant as it is not material to the present case; that question can be determined when it arises for consideration.

In view of the conclusion which I have reached that the landlord would have failed in his action to recover possession of the premises from the plaintiff it follows in my opinion that the plaintiff has established sufficient right to or interest in the premises to support an action for trespass. In this connection I have carefully considered the case of *Thompson v. Ward*[1]. That was a case in which the plaintiff was a statutory tenant of a house in which he lived with the defendant who was his mistress. After some time he left the premises taking all his possessions with him but leaving his mistress in occupation. Later he remarried and it was found as a fact that he abandoned any intention of returning to the house. Subsequently, however, he changed his mind and decided to return to the premises with his wife. After serving a notice on his former mistress he brought an action against her for trespass. He succeeded in obtaining an order for possession in the county court but this decision was reversed on appeal. In considering this case it is in my opinion vital to note three matters : first, the plaintiff was a statutory tenant so that there was a statutory tenancy already in existence,

secondly, there is no provision in the English Rent Restriction Acts corresponding to paragraph (c) of section 16 of the Ordinance which relates, *inter alia,* to members of the tenant's family and thirdly, there was no person residing in the house and taking upon herself the role played by Aminah in the present case. With regard to the first matter there was some discussion by Evershed M.R. at pages 161 and 162 of the report of the meaning to be given to the words "retains possession" in section 15(1) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 which provides, *inter alia,* that a tenant who by virtue of the provisions of the Act retains possession of any dwelling-house to which the Act applies shall, so long as he retains possession, observe and be entitled to the benefit of all the terms and conditions of the original contract of tenancy. In the construction and application of the English Rent Restriction Acts the words "retains possession" have been given a very special meaning. This is directly due to the principle laid down in *Skinner v. Geary*[2], *supra* and elaborated in *Brown v. Brash*[3], *supra,* a statutory tenant who desires protection under the Rent Restriction Acts must either remain in personal occupation of the dwelling-house or instal in it a caretaker or representative with the status of a licensee and with the function of preserving the premises for his own ultimate homecoming. In the Colony, a statutory tenant is protected under the Ordinance even though he is not residing in the dwelling-house and has no intention of returning to it, provided that a member of his family is residing in it. Such being the law in the Colony, it would in my opinion be wrong to place the same special, indeed peculiar, construction on the words "remains in possession." The test to be applied in the Colony in determining whether a statutory tenant has lost the protection of the statute is different from that to be applied in England. In my opinion the test to be applied in the Colony in determining whether a contractual tenant has become a statutory tenant is also different from that to be applied in England. As I have already indicated, in neither case is it essential for the tenant in the Colony to remain in occupation of domestic premises either in person or through the special type of licensee who has been installed in them with the function of preserving them for his homecoming. If he is already a statutory tenant the premises are protected if a member of his family is residing in them. Where his contractual tenancy has been determined he becomes a statutory tenant if he retains legal possession of the premises through a mere licensee and a member of his family is residing in them; in many cases the licensee and the member of his family would be one and the same person. It is to be observed that in *Thompson v. Ward*[1], *supra,* the question was whether the statutory tenant had by abandoning the premises lost the protection of the statute whereas in the present case the question is whether the plaintiff became a statutory tenant when his contractual tenancy came to an end and continued to be a statutory tenant. In my opinion the plaintiff remained in possession of the premises through the defendant and his daughter Aminah and therefore became a statutory tenant on the determination of his contractual tenancy. Having become a statutory tenant, the plaintiff remained under the protection of the Ordinance because Aminah, who was a member of his family, was residing in the premises. By preserving his status as a statutory tenant the plaintiff also established a sufficient right to or interest in the premises to support an action for trespass.

For the reasons which I have stated I would dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *Christopher & Francis; Donaldson & Burkinshaw.*

LIM ENG LIEW v. PUBLIC PROSECUTOR

[A. Cr. J. (Thomson C.J.) January 14, 1957]

[Ipoh — Criminal Appeal No. 78 of 1956]

Theatres and Places of Public Amusement Enactment, 1936, ss. 3 & 10— "Juke Box" — Whether constitutes a "public amusement"— Whether public amuse ment was "carried on" on premises.

The appellant was the owner of premises at No. 163 Brewster Road, Ipoh, which he conducted as coffee shop and bar. He held a liquor licence in respect of the bar but the premises were not licensed as a place of public amusement. In the premises, besides the usual coffee shop furniture, there was also a "Juke Box". The appellant was charged with keeping open "a place of public amusement, to wit, a bar where entertainment in the form of music from a juke box is carried on without a licence issued in that behalf" an offence under section 3 punishable under section 10 of the Theatres and Places of Public Amusement Enactment, 1936. He was convicted and fined $25.

On appeal, two questions arose: (i) whether the operation of the "Juke Box" constituted a public amusement; (ii) whether public amusement was "carried on" on the premises.

Held: (1) the operation of a "Juke Box" constitutes a public amusement within the meaning of the Theatres and places of Public Amusement Enactment, 1936;

(2) in the circumstances of the case, at the material date public amusement was carried on the premises so as to bring those premises within the description of a "place of public amusement."

Cases referred to:—

(1) *Anderson v. Anderson* (1895) 1 Q.B. 749.

(2) *Allen v. Emmerson* (1944) 1 All E.R. 344.